DATE: June 19, 1995
CASE NO. 94-ERA-38

IN THE MATTER OF

BRANDON BRAGG,

COMPLAINANT,

v.

HOUSTON LIGHTING & POWER COMPANY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The parties submitted a Settlement Agreement and Full and Final Release seeking approval of the settlement and dismissal of the complaint. The Administrative Law Judge (ALJ) issued a decision on May 18, 1995, recommending that the settlement be approved. The request for approval is based on an agreement entered into by the parties, therefore, I must review it to determine whether the terms are a fair, adequate and reasonable settlement
of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* ¶ 5(a) and (c). For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate

and reasonable settlement of the Complainant's allegations that Respondent violated the ERA.

Paragraph 5 contains language which provides that the parties and their attorneys shall keep the terms of the Settlement Agreement confidential except to family members, attorneys and financial advisors.
I construe this confidentiality provision as not restricting any disclosure where
required by law. *McGlynn v. Pulsair Inc.*,
Case No. 93-CAA-2, Sec. Final Order Approving Settlement, June 28, 1993, slip op. at 3.

The parties' submissions including the agreement become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. [1]
See Debose v. Carolina Power & Light Co., Case No. 92-ERA-14, Ord. Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-3 and cases there cited. A notice will be prominently displayed in the record of this case referring to the confidentiality request of the parties, directing that the procedures in 29 C.F.R. § 70.26 be followed if a FOIA request is received.

I find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, I APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. §70.26(h).